

### **REMARKS**

Claims 1 – 19 are in the case. Claims 2-10, 16, and 18-19 are allowable if rewritten in independent form, and this indication of patentable subject matter is acknowledged with appreciation. Claims 1, 11-15, and 17 have been rejected and are presented for reconsideration and further examination in view of the foregoing amendments and following remarks.

In the outstanding Office Action, the Examiner rejected Claims 1, 11 – 15 and 17 under 35 U.S.C. 102(b) as being anticipated U.S. Patent No. 4,052,031 to Melfi (hereafter referred to as “Melfi”); rejected Claim 15 under 35 U.S.C. 112, Second Paragraph as being indefinite; and, indicated that Claims 2 – 10, 16, 18 and 19 would be allowable if rewritten in independent form.

By this Response, Applicant amends Claim 15 to obviate the indefiniteness rejection, but respectfully traverses the Section 102(b) rejections. In addition, a typographical error in paragraph 24 involving the word “lever” has been corrected together with an antecedent basis error and a minor statement about threaded shaft 17. It is submitted that no new matter has been entered in the specification or the claims.

### **Rejections under 35 U.S.C. 102(b)**

The Examiner rejected Claims 1, 11 – 15 and 17 under 35 U.S.C. 102(b) as being anticipated by Melfi. The Examiner said:

MELFI discloses a formwork including a support structure (28,30) including a platform (32,24) having a platform surface defining a first panel surface to be cast, and a sub-structure (36) and (48,54) supporting the platform (32,34), a plurality of side forms (82,82') positionable on the platform (32,34) and having a side form surface defining an additional panel surface; wherein each side form (82,82') is braced by at least one brace structure (38,52) and (88,88') connected to the side forms (82,82) and having an adjustment means (104,128) for adjusting the length and width dimensions of the panel to be cast, column 4, lines 13-16 and column 6, lines 17-22. In reference to claim 11 the formwork system of MELFI also includes a plurality of side forms (82,82') that vary the height and thickness of the panels to be cast. Regarding claim 12, the sub-structure (36) is wood beams. In reference to claims 13 and 14, the form is designed with a profile that imparts a flat planar shape to the sides and platform of the panel to be cast. Regarding claim 15, the formwork is a modular extension mould used to fabricate higher height walls. In reference to claim 17, the sub-structure (48,54) includes channels that provide support to the platforms (32,34).

### Response

Reconsideration and withdrawal of the rejections are respectfully requested.

To anticipate a claim, a single reference must contain every element of the claim. Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81, 90 (Fed. Cir. 1986). "The standard for lack of novelty, that is, for "anticipation," is one of strict identity." 1 Chisum on Patents §3.01. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." Verdegaal Bros. v. Union Oil Co. Of Ca., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the case of Verve, LLC v. Crane Cams, Inc., 311 F.3d 1116, 1120, 65 USPQ2d 1051 (Fed. Cir. 2002) the court said that "A single reference must describe the claimed invention with sufficient precision and detail

to establish that the subject matter existed in the prior art, citing In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) (“the reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it”). The Federal Circuit decisions have repeatedly emphasized that anticipation is established only if (1) all the elements of an invention, as stated in a patent claim, (2) are identically set forth, (3) in a single prior art reference. The Federal Circuit decisions have also, explicitly or implicitly, rejected any standard of “substantial identity.” Thus, an anticipation rejection under Section 102 must have a single reference in which each of the claimed features are disclosed in that reference.

Applicant submits that Melfi does not disclose, teach, or suggest all of the features of independent Claim 1, and thus of rejected Claims 11-15, and 17 dependent therefrom.

Independent Claim 1 recites a formwork system for use in casting prefabricated panels. The system includes, *inter alia*, “a support structure including a platform ... having a platform surface defining a first panel surface of a panel to be cast” and a plurality of side forms positionable on the platform surface and being braced by an adjustable brace structure to adjust the length and width dimensions of the panel to be cast, each side form having a side form surface defining an additional panel surface of the panel to be cast.” (Present application, Claim 1).

The Melfi patent is also directed to an adjustable concrete form apparatus for casting concrete walls for buildings. It includes a support structure and a sub-structure which support two platform sections defining a first and a second panel surface of a panel to be cast. The Melfi patent also discloses a form apparatus having two end form sections 78 and 80 that extend between facings 32 and 34. The end section are pivotally connected to one of the platform sections, as shown in FIGs 1 and 3, with pins 96. The platform sections 28 and 30 are adjustably spaced apart by an adjusting means 104, Fig. 7. Thus the thickness of the panel can be adjusted. See for example Melfi patent at Col. 4, lines 13-16. In addition, a second adjusting means 128 (see e.g. FIGs. 1, 6 and 7) permits the vertical position of the entire form apparatus to be adjusted. See for example Melfi patent at Col. 5, lines 42 - 57 and Col. 6, lines 17 - 19.

However, the Melfi patent fails to disclose, teach, or suggest an adjustment apparatus for the claimed side forms or an adjustment means as part of a brace structure bracing the side form for adjusting the length and width dimensions of the panel to be cast. (Present application, Claim 1). In fact, by disclosing that the end form sections 78 and 80 are pivotally connected to the platform surface, the Melfi patent teaches away from any adjustment of the end form sections 78 and 80 in the length and width dimensions.

Claim 1 claims a platform surface that defines a panel surface to be cast. Claim 1 also claims side forms that define an additional panel surfaces of the panel to be cast. The side forms are claimed as being positionable on the same platform surface to adjust the length and width

dimensions of the panel to be cast. In contrast, the Melfi patent has pivotal end form sections and the adjustment means are for adjusting the thickness of the panel or the height of the panel. But the height adjustment means in the Melfi patent do not brace the side forms.

For these reasons, it is submitted that the Melfi patent fails to anticipate the present inventive subject matter. Accordingly, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. 102(b) of independent Claim 1.

For the same reasons as set forth above with respect to Claim 1, it is submitted that Claims 11-15 and 17, dependent on Claim 1, are also not anticipated by the Melfi patent.

#### **Allowable subject matter**

The Examiner objected to Claims 2 – 10, 16, 18 and 19 as being dependent from rejected base Claim 1, but indicated that these Claims would be allowable if rewritten in independent form. This indication of patentable subject matter is acknowledged with appreciation.

#### **CONCLUSION**

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant

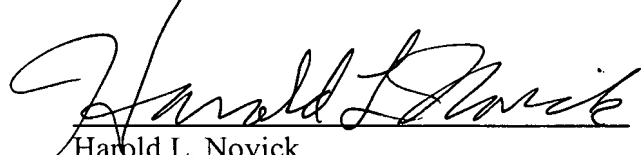
Appl. No. 10/671,428  
Amdt dtd May 25, 2007  
Reply O.A. of Feb. 26, 2007

Attorney Docket No. 82533

respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Harold L. Novick", written over a horizontal line.

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